

48A C.J.S. Judges § 179

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

a. Authority to Make Decision on Evidence Heard by Predecessor

§ 179. Findings of fact and conclusions of law made by predecessor

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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After findings of fact and conclusions of law have been rendered by the original trial judge, a successor judge has the authority to complete the formal acts necessary to conclude the litigation, including entering a formal judgment on evidence heard by the predecessor¹ and awarding costs.²

In this regard, many states have statutes or rules expressly providing that if, by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge sitting in or assigned to the court in which the action was tried may perform those duties.³ However, if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, such successor judge may in his or her discretion grant a new trial.⁴

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Footnotes

¹ Ark.—*City of Fort Smith v. France*, 250 Ark. 294, 465 S.W.2d 315 (1971).

Haw.—Matter of Death of Elwell, 66 Haw. 598, 670 P.2d 822 (1983).

2 Haw.—Matter of Death of Elwell, 66 Haw. 598, 670 P.2d 822 (1983).

Notary and appraiser fee awards

La.—Hill v. Hill, 434 So. 2d 1078 (La. 1983).

3 Ala.—Birmingham Retail Center Associates, Ltd. v. Eastwood Festival Associates, 608 So. 2d 340 (Ala. 1992).

Colo.—Colorado Nat. Bank of Denver v. Friedman, 846 P.2d 159 (Colo. 1993).

Mo.—In re A.S.O., 75 S.W.3d 905 (Mo. Ct. App. W.D. 2002).

4 Ala.—Birmingham Retail Center Associates, Ltd. v. Eastwood Festival Associates, 608 So. 2d 340 (Ala. 1992).

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Exception to law of case doctrine

A rule providing that a successor judge, sitting for an unavailable judge, may perform duties usually required after a verdict is returned or findings or a decision of the court is made but empowering a successor judge to grant a new trial if he or she is satisfied that he or she cannot perform those duties, is an exception to the "law of the case" doctrine.

Ind.—State ex rel. Indiana-Kentucky Elec. Corp. v. Knox Circuit Court, 422 N.E.2d 1247 (Ind. 1981).